1.20 o'clock in the morning was heavy. In my opinion that evidence is not sufficient to found a conviction for reckless driving under section 26 of the Ordinance. I would therefore allow the appeal to the extent that the conviction is altered to one under section 304A of the Penal Code. It is conceded that under the Criminal Procedure Code I have power to substitute a conviction under the Penal Code on a charge under the Road Traffic Ordinance so long as the substituted conviction is not of a more serious offence. The only matter to be dealt with then is the question of sentence.

As regards sentence, looking at the evidence on the record and taking into consideration all the circumstances including the time, the probability that the death resulted from the deceased hitting the road thereby causing the fatal injury, the fact that the two occupants of the trishaw were only slightly injured thereby indicating a probability that the speed of the appellant's car was not excessive, in the circumstances I think justice would be served if I impose a fine in this case. I therefore set aside the sentence of imprisonment and substitute a fine of $1,000. The disqualification to remain as imposed by the learned magistrate.

Sentence of imprisonment set aside; fine imposed; disqualification to remain.

Solicitors: *Braddell Bros.*

LIEW KOH TAI v. PUBLIC PROSECUTOR

[F.C. (Wylie C.J. (Borneo), Tan Ah Tah F.J. and Simpson J.) October 8, 1964]

[Jesselton — Federal Court Criminal Appeal No. 40 of 1964]

Criminal Procedure — Trial with assessors — Whether judge bound to act in accordance with opinion of assessors — Criminal Procedure Code, Sabah, 1959.

In this case the appellant was convicted of murder. One of the grounds of appeal was that the trial judge should have acted in accordance with the opinion of two of the assessors that the appellant was guilty of culpable homicide not amounting to murder.

Held: under the Criminal Procedure Code the judgment of the judge becomes the judgment of the court and he has full authority to give that judgment contrary to the opinion of the assessors. The judge is bound to make up his own mind on the facts and not be guided by the opinions of the assessors.

FEDERAL COURT.

J. Treleaven for the appellant.

Charles Ho (Deputy Public Prosecutor) for the respondent.

Wylie C.J. (Borneo) (delivering oral judgment): The appellant was convicted on 18th June, 1964 of the offence of murder. Briefly, the facts were that a housewife was found murdered with very severe wounds caused by a parang or similar instrument. There were nine wounds according to the doctor. The wound which seems to have been the cause of death was a very severe wound across her face and both jaws. Several parts of the house had been ransacked and money and other articles had been taken away. Eventually a necklace was traced to the sister-in-law of the accused. The appellant's finger-prints had been found at the scene and he made a voluntary confession to a magistrate in which he admitted causing the wounds. As a result of that evidence there can be no doubt that the appellant was the person who inflicted the wounds. In his statement, the appellant described that he had been gambling and drinking the night before and he got home at 7 a.m. After breakfast he went to gamble again. He lost and began drinking at a club and a shop. At about 10.30 a.m. he left Beaufort and passed the house of the deceased. She invited him in and offered him a drink. He asked her to lend him some money. She refused, and as a result of her refusal he took hold of her. She obtained a chopper and attempted to strike him. He struggled with her and she released her hold of the chopper. He recovered the chopper from the floor and slashed her with it. He then went home and washed his clothing and went to sleep.

As far as the facts are concerned, the grounds of appeal were that on the balance of probabilities the trial judge should have found that by reason of intoxication at the time of killing the appellant was incapable of realising what he was doing. From a legal point of view I cannot find anything in support of this. There is no evidence as to the appellant's condition at the time except his own statement. If we accept his statement as to what he did, then it seems to follow automatically that there is no room to find that he was temporarily insane or incapable of performing a murder without realising what he was doing. He described in detail all that he did. In addition, there was all the other evidence that the house was ransacked and a necklace taken from the woman's neck. He washed out his clothes when he got home. This evidence certainly does not raise any probability or ground for suggesting that he was temporarily insane, or so drunk that he could not form the intent necessary to constitute the offence of murder.

That being the state of the evidence, the trial judge was fully justified in holding that the offence of murder had been proved beyond reasonable doubt.

The first ground of appeal is to the effect that the trial judge should have acted in accordance with the opinion of two of the three assessors that the appellant was guilty of culpable homicide not amounting to murder. There can be no doubt that under the Criminal

Procedure Code, the judgment of the judge becomes the judgment of the court and that he has full authority to give that judgment contrary to the opinion of the assessors. Indeed, he is bound to make up his own mind on the facts and not be guided by the opinions of the assessors. There is nothing in this ground in law or otherwise. For these reasons the court is of the opinion that this appeal should be dismissed, and it is dismissed accordingly.

Appeal dismissed.

LOW GEK KIM v. SEOW LEK KEE

[O.C.J. (Winslow J.) October 9, 1964]

[Singapore — Originating Summons No. 100 of 1964]

Husband and Wife — Plaintiff and defendant living as — Personal property — Joint deposit of jewellery in bank safe deposit — Joint property.

Banking — Deposit of jewellery in joint names in bank — Parties living together as man and wife — Notice of severance — How property to be divided.

The plaintiff and defendant who had been living together as man and wife hired a safe deposit at the Oversea-Chinese Bank in their joint names and stored various items of jewellery in it. The box was operated by the plaintiff who used to take jewellery out from time to time, some of which she replaced and some of which she did not. The plaintiff and defendant parted company in 1963. It was common ground that the object behind the storage of jewellery in the box was to provide for their old age and to enable the survivor to utilise the contents for the purpose of providing a good funeral for the other and to keep whatever balance remained for his or her own sole use.

Held: the present contents of the box are the joint property of the plaintiff and defendant during their lives and as notice of severance had been given the contents must be divided between them in equal shares.

Cases referred to:—

(1) *Foley* v. *Foley* [1911] 1 Ir.R. 281.

(2) *In re Harrison, Day* v. *Harrison* (1920) 90 L.J.Ch. 186.

ORIGINATING SUMMONS.

H. Wilson for the plaintiff.

C. F. J. Ess for the defendant.

Cur. Adv. Vult.

Winslow J.: In 1961 the plaintiff and defendant, who had been living together as man and wife for over 20 years, hired a safe deposit box No. 140 from the Oversea-Chinese Bank in their joint names in which they stored various items of jewellery which they have described and with regard to which they have produced reasonably satisfactory evidence that they were in fact so stored either from the commencement of the hiring or from time to time thereafter.

The box was operated by the plaintiff who used to take jewellery out from time to time, some of which she replaced and some of which she did not.

The question for decision now is who is entitled to whatever jewellery remains in this box.

It is common ground that, from the time that the box was first hired until early 1963, when the plaintiff and defendant parted company, the object behind the storage of jewellery in this box was to provide for their old age and to enable the survivor to utilise the contents of the box for the purpose of providing a good funeral for the other and to keep whatever balance remained for his or her own sole use.

In my view, the law relating to the ownership of jewellery stored in a box in the joint names of two persons such as the plaintiff and the defendant in these circumstances is analogous to the law relating to a banking account held in the joint names of two such persons. As *Hart* observes at page 321 of the Law of Banking Volume 1, 4th Edition —

> "An account in the name of two or more persons, not being partners, can properly be drawn against only by a cheque signed by each of them, in the absence of special directions given by them to the banker.
>
> But, upon the death of one of them, the survivor is entitled to the credit balance then existing."

At page 323 *Hart* refers in the same volume to two cases which are appropriate to an understanding of the law to be applied in the present case in the following terms:—

> "In *Foley* v. *Foley* (1) A., a woman carrying on business in a small shop and possessed of 1,200*l.*, had married B., a workman. Both before and after the marriage A., in the presence of B., announced her intention to put this sum into their joint names, to become the property of the survivor; and a few days after the marriage, without any solicitation or pressure on B's part, she lodged the money on deposit receipt in their joint names. In her evidence at the trial she said that the money was to be 'on both our names to work on it as husband and wife should'. After the marriage B. paid his wages to her. The money on deposit was drawn on from time to time as required for the shop or other expenses, the profits of the shop being lodged from time to time on deposit receipt in their names. It was held that the money was the joint property of A. and B. during their lives, and that it would become the absolute property of the survivor.
>
> In *In re Harrison, Day* v. *Harrison* (2) a husband had in 1908 transferred the money standing to a current account at his bank in his own name into the joint names of himself and his wife. He did not inform his wife of the joint account, and always drew cheques on the account himself. He died in November, 1919. The wife never drew any cheque on the account until shortly before his death, when he was in failing health and unable to attend to business. The bank manager then informed her of the joint account, and advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself and his wife, and in August, 1919, consolidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with his wife's initials and containing the deposit receipt and a document in which he said: 'I would like paying away at once if